

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 35525

STATE OF IDAHO,	)	2009 Unpublished Opinion No. 578
	)	
Plaintiff-Respondent,	)	Filed: August 20, 2009
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
KEVAN ANTHONY HILL,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Cheri C. Copsey, District Judge.

Order revoking probation and ordering into execution previously imposed sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Sarah E. Tompkins, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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Before PERRY, Judge, GUTIERREZ, Judge  
and GRATTON, Judge

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PER CURIAM

While in prison for burglary and grand theft and within twelve days of topping out his sentence, Kevan Anthony Hill was charged with aggravated battery, I.C. §§ 18-903(a), 18-907(a), with a persistent violator enhancement. Pursuant to a plea agreement, Hill pled guilty to the charge and the state agreed to dismiss the persistent violator enhancement. The district court sentenced Hill to ten years, with three years determinate, suspended the sentence and placed Hill on probation for ten years. Hill filed an Idaho Criminal Rule 35 motion for reduction of sentence, which the district court denied. Hill subsequently violated the terms of his probation and the district court revoked probation and ordered execution of the original sentence. Hill

appeals, contending that the district court abused its discretion in revoking probation and failing to reduce his sentence *sua sponte*.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. See *State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 170 P.3d 387 (2007). When we review a sentence that is ordered into execution following a period of probation, we do not solely base our review upon the facts existing when the sentence was imposed. Rather we also examine all the circumstances bearing upon the decision to revoke probation and require execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *State v. Whittle*, 145 Idaho 49, 52, 175 P.3d 211, 214 (Ct. App. 2007); *Adams*, 115 Idaho at 1055, 722 P.2d at 262; *State v. Grove*, 109 Idaho 372, 373, 707 P.2d 483, 484 (Ct. App. 1985); *State v. Tucker*, 103 Idaho 885, 888, 655 P.2d 92, 95 (Ct. App. 1982).

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation or in ordering

execution of Hill's original sentence without modification. Therefore, the order revoking probation and directing execution of Hill's previously suspended sentence is affirmed.